U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0157 BLA

JAMES D. TINNEL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
COASTAL COAL - WEST VIRGINIA, LLC	)	
	)	DATE ISSUED: 02/25/2016
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

George E. Roeder, III (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2012-BLA-6031) of Administrative Law Judge Drew A. Swank awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on August 23, 2011.

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4) (2012),[1] the administrative law judge credited claimant with 29.34 years of underground coal mine employment,[2] and found that the evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits, beginning September 2011, the month in which he found that claimant filed his claim.[3]

On appeal, employer argues that the administrative law judge erred in finding that the evidence established total disability and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that employer did not rebut the presumption. Finally, employer contends that the administrative law judge erred in his determination of the commencement date for benefits. Neither claimant, nor the Director, Office of Workers' Compensation Programs, has filed a response brief.[4]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence,

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where a miner worked fifteen or more years in underground coal mine employment or comparable surface coal mine employment and a totally disabling respiratory impairment is established. 30 U.S.C. § 921(c)(4) (2102); *see* 20 C.F.R. §718.305.

[2] The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibit 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] The administrative law judge listed the date of filing as September 13, 2011. Decision and Order at 2. However, a review of claimant's claim form reveals that it was first stamped "received" on August 23, 2011. Because a claim for benefits shall be considered filed on the day it is received by the office in which it is first filed, claimant's claim is properly characterized as having been filed on August 23, 2011. 20 C.F.R. §725.303(a)(1).

[4] The administrative law judge's finding that claimant had 29.34 years of underground coal mine employment is unchallenged. Therefore, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption

Employer argues that the administrative law judge erred in finding that claimant established that he is totally disabled, and thus erred in finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4). Specifically, employer contends that the administrative law judge erred in his evaluation of the pulmonary function study evidence. Further, employer contends that the administrative law judge based his finding of total disability solely on the pulmonary function study evidence, without considering the arterial blood gas study evidence and medical opinion evidence, and without weighing the evidence supportive of total disability against the contrary probative evidence. Employer argues, therefore, that the administrative law judge failed to comply with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), which requires that the administrative law judge consider all relevant evidence, render findings on all material issues of fact or law, and set forth the rationale underlying his findings. Employer's Brief at 6-14.

After reviewing the arguments on appeal, the administrative law judge's findings, and the relevant evidence, we affirm the administrative law judge's determination that claimant established total disability under 20 C.F.R. §718.204(b)(2). The administrative law judge found that five of the seven pulmonary function studies of record, including all four of the most recent 2013 studies, produced qualifying values. Decision and Order at 10; Director's Exhibits 12, 25; Claimant's Exhibit 3; Employer's Exhibit 1. The administrative law judge therefore concluded that claimant "has demonstrated a total respiratory or pulmonary disability by pulmonary function test results" pursuant to 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 20.

Employer correctly points out that the administrative law judge mischaracterized Dr. Zaldivar's 2013 post-bronchodilator pulmonary function study result as qualifying, when it was non-qualifying. Decision and Order at 10; Employer's Brief at 9-11; Employer's Exhibit 1. Therefore, contrary to the administrative law judge's summary of the evidence, four of the seven pulmonary function studies of record, including three of the four most recent 2013 studies, produced qualifying values. Employer also correctly states that the administrative law judge did not render specific findings regarding the arterial blood gas study and medical opinion evidence. In briefing these issues, however, employer has not explained how a correct recitation of the pulmonary function study results, or consideration of the non-qualifying blood gas studies and the medical opinions,

would have changed the administrative law judge's finding.[5] *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference"). The physicians who rendered medical opinions on the issue of total disability, Drs. Porterfield,[6] Gaziano,[7] Bellotte,[8] and Zaldivar,[9] all ultimately diagnosed a totally disabling pulmonary impairment, based on claimant's pulmonary function study results, regardless of the presence of Dr.

[5] The record contains no evidence of cor pulmonale with right-sided congestive heart failure. Thus, claimant could not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii).

[6] Dr. Porterfield examined claimant on behalf of the Department of Labor on September 21, 2011 and reported that claimant's pulmonary function study revealed that he was "100% impair[ed]." Director's Exhibit 12.

[7] Dr. Gaziano examined claimant on May 2, 2013 and indicated in his report that claimant is unable to perform his usual coal mine work due to the moderately severe obstructive impairment, and moderately reduced diffusing capacity defect, reflected by his pulmonary function study results. Claimant's Exhibit 2.

[8] Dr. Bellotte examined claimant on March 1, 2012 and initially determined, in in a report dated March 13, 2012, that claimant has only a mild pulmonary impairment based on the pulmonary function testing he performed. Following his review of additional pulmonary function study results, however, Dr. Bellotte testified that claimant could not return to his usual coal mine work. Employer's Exhibit 6 at 19-20.

[9] Dr. Zaldivar examined claimant on April 17, 2013 and diagnosed a moderate obstructive impairment based on claimant's pulmonary function study results. Dr. Zaldivar concluded that, because of his diminished ventilatory capacity, claimant could not perform very heavy manual labor, and would have "difficult[y]" performing his usual coal mine work because it required that he work in low coal, moving heavy loads. Employer's Exhibit 1 at 4. In his subsequent deposition testimony, Dr. Zaldivar agreed that claimant's moderate impairment would prevent him from performing heavy to very heavy work on a sustained basis. Employer's Exhibit 4 at 38. Dr. Zaldivar explained that although claimant's job as a roof bolter required him to lift only fifty pounds, dragging or carrying fifty pound boxes around in low coal, in the bent-over position, would be heavy labor, and would be "difficult for [claimant] to do with the breathing difficulty." Employer's Exhibit 4 at 10-11, 28-29. Dr. Zaldivar further stated that heavy and very heavy labor "are classified in the same category." *Id.* at 12. In a follow-up deposition, Dr. Zaldivar again agreed that claimant "would have difficulty performing his last coal mine work from a pulmonary standpoint." Employer's Exhibit 11 at 4.

Zaldivar's 2013 non-qualifying post-bronchodilator study, or the non-qualifying blood gas studies. Director's Exhibit 12; Claimant's Exhibit 3; Employer's Exhibits 6, 11. We, therefore, hold that the administrative law judge's mischaracterization of Dr. Zaldivar's 2013 post-bronchodilator study, and his failure to weigh the pulmonary function study evidence together with the blood gas studies and medical opinions, is harmless. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41, 17 BLR 2-16, 2-22 (6th Cir. 1993); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc); *Sheranko v. Jones & Laughlin Steel Corp.* 6 BLR 1-797 (1984); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Therefore, we affirm the administrative law judge's findings that claimant established total disability at 20 C.F.R. §718.204(b)(2), and invoked the Section 411(c)(4) presumption. *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 135, BLR (4th Cir. 2015).

Rebuttal of the Section 411(c)(4) Presumption

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant does not have either legal or clinical pneumoconiosis,[10] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

Having found that employer stipulated to the existence of simple, clinical pneumoconiosis and, therefore, is precluded from rebutting the presumption by establishing that claimant does not have pneumoconiosis, *see* 20 C.F.R. §718.305(d)(1), the administrative law judge found it unnecessary to specifically address whether employer could disprove the existence of legal pneumoconiosis.[11] Decision and Order at

[10] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[11] Because employer does not challenge the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by disproving the existence of clinical pneumoconiosis, this finding is affirmed. *Skrack*, 6 BLR at 1-711. Employer's

7, 11; Hearing Tr. at 6-7. Rather, the administrative law judge next considered whether employer was able to establish rebuttal at 20 C.F.R. §718.305(d)(1)(ii), noting that the single issue to be determined was "whether [c]laimant's total disability arises from his coal workers' pneumoconiosis due to his past coal mine employment."[12] Decision and Order at 11.

In adjudicating the issue, the administrative law judge considered the medical opinions of Drs. Bellotte and Zaldivar. Decision and Order at 11-15. Both physicians diagnosed simple, clinical pneumoconiosis, chronic obstructive pulmonary disease (COPD) with bullous emphysema and an asthmatic component. Director's Exhibit 25; Employer's Exhibits 1, 4, 6, 11. Regarding the cause of claimant's impairment, as summarized by the administrative law judge, Dr. Bellotte[13] stated that claimant's simple, clinical coal workers' pneumoconiosis did not contribute to his obstructive impairment because claimant "has multiple reason[s] to explain this abnormality," including his cardiac medication and prior cardiac surgery,[14] asthma, and cigarette smoke-induced COPD and bullous emphysema. Decision and Order at 12, 14; Director's Exhibit 25; Employer's Exhibit 6. Dr. Bellotte also stated that the pattern of claimant's obstructive impairment, which exhibited inter-testing variability, with rapid decline and an element of reversibility, is not "the progression and latency that [he] would normally associate

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failure to disprove the existence of clinical pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1).

[12] The administrative law judge should have first addressed whether employer disproved the existence of legal pneumoconiosis by establishing that claimant's chronic obstructive pulmonary disease (COPD) was not significantly related to, or substantially aggravated by, coal dust exposure. The administrative law judge should then have separately considered whether employer established that "no part of [claimant's] respiratory or pulmonary disability was caused by pneumoconiosis as defined at 20 C.F.R. §718.201." 20 C.F.R. §718.305; *see Minich v. Keystone Coal Mining Corp.*, BRB No. 13-0544 BLA, slip op. at 10-11 (April 21, 2015) (Boggs, J., concurring and dissenting).

[13] Dr. Bellotte examined claimant on March 1, 2012, and was deposed on August 7, 2013. Director's Exhibit 25; Employer's Exhibit 6.

[14] Dr. Bellotte explained that claimant's cardiac medication, Metoprolol, can cause respiratory symptoms and a decrease in pulmonary function testing, and that undergoing a thoracotomy interrupts the integrity of the chest wall, and can lead to a loss of pulmonary function. Director's Exhibit 25 at 5.

with coal mine workers' pneumoconiosis, but it does fit nicely with the exacerbations and remissions that [he came] to expect in patients who have asthmatic conditions." Decision and Order at 12, 14; Director's Exhibit 25; Employer's Exhibit 6 at 17, 19, 21.

With respect to whether any portion of claimant's impairment is due to legal pneumoconiosis, Dr. Bellotte opined that claimant does not have legal pneumoconiosis. Rather, Dr. Bellotte opined that claimant has COPD with bullous emphysema, due to cigarette smoking, and asthma. In attributing claimant's obstructive impairment to smoking, Dr. Bellotte explained, in part, that claimant had "[t]hirty years of underground mining versus 43 years of [t]obacco [a]buse" which, he stated, "is about 3 times more damaging to the [l]ungs than working at the face of the mines." Decision and Order at 12; Director's Exhibit 25 at 5. Dr. Bellotte also attributed claimant's bullous emphysema to smoking, stating that, absent a heavy dust burden, which was not seen on claimant's chest x-ray, emphysema would rarely be attributed to Category 1 simple coal workers' pneumoconiosis. Director's Exhibit 25 at 5; Employer's Exhibit 6 at 19. Thus, Dr. Bellotte concluded that claimant does not suffer from any pulmonary impairment due to coal workers' pneumoconiosis or coal mine dust exposure. Employer's Exhibit 6 at 21.

Dr. Zaldivar[15] similarly concluded that claimant does not suffer from any pulmonary impairment due to coal workers' pneumoconiosis or any coal mine-dust related disease. Employer's Exhibit 1, 4, 11. With respect to whether clinical pneumoconiosis contributes to claimant's impairment, Dr. Zaldivar stated that claimant's x-ray indicated that coal dust was retained, and that lung damage occurred, but that it is possible to have coal workers' pneumoconiosis radiographically, yet have no impairment. Dr. Zaldivar also indicated that the variable portion of claimant's impairment was not consistent with the permanent, irreversible effects of coal workers' pneumoconiosis, but was caused by asthma, which Dr. Zaldivar stated is never due to coal mine dust exposure. Employer's Exhibits 4 at 22, 41-42; 11 at 14. Dr. Zaldivar emphasized, however, that claimant's "main problem" is not his impairment from asthma, but his impairment due to smoking-related COPD from bullous emphysema. Employer's Exhibits 1; 4 at 29; 11 at 4-5, 9. Dr. Zaldivar stated that while clinical pneumoconiosis does not cause bullous emphysema, coal mine dust exposure had contributed to claimant's pulmonary impairment from COPD/emphysema, but only minimally. Employer's Exhibits 1; 11 at 11-12. In support of his conclusion that any contribution to claimant's impairment from coal mine dust exposure was minimal, Dr. Zaldivar explained that claimant began smoking at a very young age and "we now know that there are DNA changes in the lungs of young children" that make them "more likely to develop asthma, develop COPD, develop bronchitis and even lung cancer in the future." Employer's Exhibit 11 at 11-12.

[15] Dr. Zaldivar examined claimant on April 17, 2013, and was deposed on June 10, 2013 and September 8, 2014. Employer's Exhibits 1, 4, 11.

The administrative law judge discounted the opinions of Drs. Bellotte and Zaldivar because he found that they based their opinions on generalities and did not adequately explain why no part of claimant's disabling respiratory impairment was caused by pneumoconiosis. Decision and Order at 14-15.

Employer contends that in finding that employer did not rebut the presumption that claimant's disabling impairment is due to pneumoconiosis, the administrative law judge focused "on a presumed finding of unrebutted legal pneumoconiosis." Employer's Brief at 30. Employer contends that because the administrative law judge did not first provide employer with an opportunity to rebut the presumption of legal pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i)(A), the administrative law judge's decision must be vacated. Employer's Brief at 14-16, 30-31. Further, employer contends that to the extent the administrative law judge combined his discussion of legal pneumoconiosis and disability causation, such an analysis is also not affirmable because the "existence of pneumoconiosis and the cause of pulmonary disability are two separate and distinct issues with two separate standards of proof." Employer's Brief at 14-16 & n.6, 30-31. Employer also asserts that the administrative law judge did not give proper reasons for discrediting the opinions of Drs. Bellotte and Zaldivar. Employer's Brief at 19-22, 26-28. Finally, employer asserts that the administrative law judge failed to address the potential effect of claimant's simple, clinical pneumoconiosis on his pulmonary impairment. Employer's Brief at 30.

Although the administrative law judge did not consistently identify the correct rebuttal standards under the regulations, the administrative law judge permissibly discredited employer's rebuttal evidence.[16] As set forth below, the administrative law judge's discussion of the evidence, and his analysis of causation under the heading in his Decision entitled "*Cause of Total Disability*," subsumed consideration of whether the opinions of Drs. Bellotte and Zaldivar were sufficiently reasoned to establish that claimant does not have legal pneumoconiosis. Decision and Order at 20-28. Thus, under

[16] In his rebuttal analysis under 20 C.F.R. §718.305(d)(1)(ii), the administrative law judge initially framed the issue as "whether [c]laimant's total disability arises from his coal workers' pneumoconiosis due to his past coal mine employment." Decision and Order at 11. Subsequently, the administrative law judge repeatedly invoked the "substantially contributing cause" disability causation standard set forth at 20 C.F.R. §718.204(c) and, ultimately, concluded that "[e]mployer was unsuccessful in rebutting the legal presumption that Claimant's simple, clinical coal workers' pneumoconiosis was a substantially contributing cause of his total pulmonary or respiratory impairment." Decision and Order at 14-16; Employer's Brief at 30-31.

the facts of this case, we are not persuaded that employer was precluded from establishing rebuttal pursuant to the proper regulatory standard.[17]

We also reject employer's arguments regarding the administrative law judge's specific credibility findings. The evaluation of the credibility of the medical experts is a matter within the sound discretion of the administrative law judge and the Board will not reweigh the evidence or substitute its inferences for those of the administrative law judge, provided that the administrative law judge's findings are rational, supported by substantial evidence, and in accordance with law. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-22 (1988).

Relevant to the existence of legal pneumoconiosis, the administrative law judge properly considered that, in excluding coal mine dust as a contributing factor in claimant's disabling COPD/emphysema, Dr. Bellotte relied, in part, on the fact that claimant had forty-three years of cigarette smoke exposure, but only thirty years of coal mine dust exposure. Decision and Order at 14. The administrative law judge permissibly gave less weight to Dr. Bellotte's causation opinion to the extent the doctor based his opinion on a generalized comparison of the length of claimant's exposures without addressing claimant's specific condition.[18] *See Tackett v. Cargo Mining Co.*, 12 BLR 1-

[17] To rebut the presumption at 20 C.F.R. §718.305(d)(1)(i), employer must affirmatively establish that claimant does not have both legal and clinical pneumoconiosis. *See Minich*, BRB No. 13-0544 BLA, slip op. at 10. To show that the miner does not have legal pneumoconiosis, employer must establish that the miner does not suffer from any chronic lung disease or impairment that is *significantly related to, or substantially aggravated by*, dust exposure in coal mine employment. 20 C.F.R. §718.201(2)(b). As employer correctly asserts, Section 718.305(d)(1)(ii) provides a different rebuttal standard. In order to rebut the presumed fact of disability causation, employer must present credible evidence that *no part*, not even an insignificant part, of claimant's pulmonary or respiratory disability was caused by either legal or clinical pneumoconiosis. *See Minich*, BRB No. 13-0544 BLA, slip op. at 11. Here, however, the administrative law judge permissibly found that employer's physicians failed to offer credible opinions on the issue of the etiology of claimant's impairment. Thus, the administrative law judge's recitation of an incorrect rebuttal standard was without consequence. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[18] The administrative law judge rationally found that, in comparing claimant's thirty years of coal mine dust exposure to his forty-three years of cigarette smoking to conclude that smoking, and not coal mine dust, was the main reason for claimant's pulmonary impairment, Dr. Bellotte focused on the duration of claimant's harmful

11, 1-14 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985); Decision and Order at 14. The administrative law judge also considered Dr. Bellotte's opinion that pneumoconiosis did not contribute to claimant's obstructive impairment because claimant "has multiple reason[s] to explain this abnormality." Decision and Order at 12, 14; Director's Exhibit 25; Employer's Exhibit 6. The administrative law judge rationally concluded that, in opining that other conditions could account for claimant's impairment, Dr. Bellotte did not adequately explain why pneumoconiosis did not contribute, along with claimant's other conditions, to his disabling impairment. *See Bender*, 782 F.3d at 144; *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 14. Further, contrary to employer's contention, a review of the administrative law judge's decision does not substantiate employer's contention that the administrative law judge "failed to consider" Dr. Bellotte's additional reasons for concluding that coal mine dust exposure is not a causative factor in claimant's respiratory impairment. Employer's Brief at 19-20. The administrative law judge's decision includes a thorough review of Dr. Bellotte's report and testimony. *See* Decision and Order at 12, 14. Because the administrative law judge rationally found that Dr. Bellotte did not adequately explain the basis for his opinion, in light of the specifics of claimant's case, we affirm the administrative law judge's finding that Bellotte's opinion is "unpersuasive." *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

With respect to Dr. Zaldivar's opinion, the administrative law judge correctly noted that, in opining that coal mine dust was only a minimal cause of claimant's disabling COPD/emphysema, Dr. Zaldivar referenced medical studies concerning the disproportionate impact of smoking on younger men. Comparing the percentage of people who develop COPD from smoking, as opposed to the percentage of people who develop it from coal mine dust exposure, Dr. Zaldivar concluded that it was "more likely" that claimant developed COPD from smoking, than from his coal mine dust exposure. Employer's Exhibit 10 at 7-8. The administrative law judge permissibly found Dr. Zaldivar's causation opinion to be "unpersuasive" because the doctor relied, at least in part, on generalities, and did not adequately explain why coal mine dust exposure was not a significant contributing or aggravating factor in claimant's particular case. *See Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *see also Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1345-46, 25 BLR 2-549, 2-568 (10th Cir. 2014);

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exposures, and not on claimant's individual susceptibility. Decision and Order at 14, *citing* 65 Fed. Reg. 79.939 (Dec. 20 2000) (*stating* "Just as not all smokers develop COPD and pulmonary dysfunction, pulmonary impairment is not universal in coal miners.").

Consolidation Coal Co. v. Director, OWCP [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); *Tackett*, 12 BLR at 1-14; *Calfee*, 8 BLR at 1-7; Decision and Order at 15. We, therefore, affirm the administrative law judge's determination to discredit Dr. Zaldivar's opinion. *See Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

In conclusion, although the administrative law judge did not consistently identify and apply the rebuttal standards at 20 C.F.R. §718.305(d)(1)(i) or (ii), the error ultimately is harmless, as he discredited employer's physicians on the grounds that they did not rationally explain their opinions. *See Larioni*, 6 BLR at 1-1278. Based on the administrative law judge's permissible determinations that the opinions of Drs. Bellotte and Zaldivar were not reasoned regarding whether coal mine dust contributed to claimant's obstructive respiratory impairment, employer's evidence is insufficient to disprove the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); *see Bender*, 782 F.3d at 135. Additionally, because the opinions of Drs. Bellotte and Zaldivar were rejected by the administrative law judge as not reasoned on the etiology of claimant's disability, they are also insufficient to establish that no part of claimant's disabling impairment is due to pneumoconiosis, under 20 C.F.R. §718.305(d)(1)(ii).[19] *See Bender*, 782 F.3d at 135; *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1069, 25 BLR 2-431, 2-446-47 (6th Cir. 2013); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). We, therefore, affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption and affirm his award of benefits.

Date for the Commencement of Benefits

Employer challenges the administrative law judge's determination regarding the commencement date for benefits. Once entitlement to benefits is established, the date for the commencement of those benefits is determined by the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503; *see Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). If the date of onset of total disability due to pneumoconiosis is not ascertainable from all the relevant evidence of record, benefits will commence with the month during which the claim was filed, unless evidence credited by the administrative law judge establishes that the miner was not totally disabled due to

[19] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Bellotte and Zaldivar, we need not address employer's remaining allegations of error regarding the administrative law judge's weighing of these opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990).

The administrative law judge found that none of the medical experts addressed a specific onset date of total disability. Thus, the administrative law judge awarded benefits beginning September 2011, the month in which he found that claimant filed his claim. Employer contends that while the administrative law judge based his finding of total disability on the pulmonary function study evidence, the March 1, 2012 pulmonary function study, and the blood gas testing of record revealed non-qualifying values. Employer's Brief at 32-33. Thus, employer asserts, the evidence establishes that claimant did not have a pulmonary disability in March 2012, and is not entitled to receive benefits prior to that date. *Id.* We disagree.

The administrative law judge did not credit any evidence that claimant was not totally disabled due to pneumoconiosis at any time subsequent to the filing date of his claim. Rather, the administrative law judge found the March 1, 2012 non-qualifying pulmonary function study to be outweighed by the preponderance of the evidence, including Dr. Porterfield's September 21, 2011 qualifying study.[20] Decision and Order at 10. Further, the medical evidence credited by the administrative law judge establishes only that the miner became totally disabled due to pneumoconiosis at some time prior to the date of that evidence. *See Merashoff v. Consolidation Coal Co*, 8 BLR 1-105, 1-109 (1985). Since the administrative law judge's finding, that the medical evidence does not reflect the date upon which claimant became totally disabled due to pneumoconiosis, is supported by substantial evidence, we affirm the administrative law judge's determination that benefits are payable from the month in which claimant filed this claim. 20 C.F.R. §725.503(b). However, the administrative law judge misidentified the month of filing as September 2011. As noted *supra* at n.3, claimant filed his claim with

[20] We reject employer's contention that Dr. Porterfield's deposition testimony establishes that claimant "was not disabled in March 2012." Employer's Brief at 33 n.8. As employer contends, Dr. Porterfield stated that he based his disability opinion on the qualifying pulmonary function study results he obtained. Employer's Brief at 33; Employer's Exhibit 3 at 18. Further, when asked: "How about if you use Dr. Bellotte's levels that were substantially higher?," Dr. Porterfield replied, "Well, I would need to go back and look at the table on that. I mean, obviously, if they're above disability range, then that would change the conclusion." *Id.* However, as Dr. Porterfield neither compared Dr. Bellotte's pulmonary function testing with the tables published by the Department of Labor, nor issued a supplemental opinion recanting his earlier conclusions, employer's contention that Dr. Porterfield "would not find pulmonary disability" is, at best, speculation. Employer's Brief at 33.

the district director on August 23, 2011. Director's Exhibit 2. Consequently, we modify the administrative law judge's decision to reflect that benefits shall commence as of August 2011. 20 C.F.R. §§725.305(b), 725.503(b).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed, as modified to reflect August 2011 as the month from which benefits commence.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge